IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1535 OF 2002

The State of Maharashtra & Ors. ...Petitioners

Versus

Parsu Jyotiba Sawant ...Respondent.

Mr. S.R. Nargolkar, Assistant Government Pleader,
for the Petitioners

Mr. N.V. Bandiwadekar for the respondent.

CORAM: V.G. PALSHIKAR, Ag.C.J., &
SMT. NISHITA MHATRE, J.

DATE: FEBRUARY 8, 2006.

P.C.:-

1. By this petition, the petitioners have challenged the order passed by the Maharashtra Administrative Tribunal (for short, "the Tribunal"), allowing the Original Application filed by the present respondent. The Tribunal consequently set aside the order passed by the Disciplinary Authority, penalising the original applicant by removal from service.

2. The charges levelled against the respondent obviously were serious. They were as under:-

> "(1) While the respondent was given a return warrant issued for travel from Delhi to Mumbai, he travelled on a ticket purchased by the brother of the accused by three tire in Jammu Tavi Express.
>
> (2) Instead of entrusting the accused to the Jail Authority on return to Mumbai, or taking the accused to nearby police station, in view of the protection of the accused, by accepting or taking risk while on duty, the respondent went to a guest house at Borivali, and dined and consumed liquor provided by the accused.
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> (3) The respondent did not take any objection to the non-disciplinary act of the in-charge of the Escort Squad.

(4) When medical examination was done of the respondent, his blood was found to contain 0.092 per cent alcohol.

(5) The respondent did not inform the Head Quarters in time of his return to Mumbai after completing his assigned duty at Delhi."

3. Inquiry was conducted, and the Inquiry Officer found all the charges proved, and recommended punishment. The Disciplinary Authority, then, on consideration of the entire findings, meted out the punishment, which was challenged by the original applicant before the Tribunal.

4. The Tribunal proceeded to set aide the order basically on the ground that the charge of having consumed alcohol was not proved. It nowhere refers to other charges. It nowhere considers the gravity of the charges. The Tribunal has not given any consideration that the punishment given by the Disciplinary Authority was grossly disproportionate to the misconduct committed, and yet set aside the order of punishment and directed fresh consideration of the matter,

restricting the right of the Disciplinary Authority to impose punishment of compulsory retirement and/or removal or dismissal from service. Without giving any reason, the discretion of the Disciplinary Authority to impose punishment, permissible in law, cannot be restricted. In our opinion, therefore, the impugned order is unsustainable and deserves to be set aside.

5. We accordingly set aside the impugned order passed on 17th November, 2000 by the Maharashtra Administrative Tribunal, remit the matter back to the Tribunal to decide the Original Application afresh in accordance with law and in the light of our observations made hereinbefore. As a consequence of setting aside the order passed by the Tribunal, the order of penalty, as imposed by the Disciplinary Authority, stands restored and consequences of such restoration will follow. The Tribunal shall decide the matter as far as possible in three months' time.

6. The petition is accordingly disposed of. Rule is discharged.